IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ahmed Noor. Versus Mansoor Hussain & Anr.

S.B. Criminal Misc. Petition No. 777/2006
against the order dated 15-6-2006 passed
by the Addl. Sessions Judge, Nathdwara,
in Criminal Revision No. 12/2006.

...

Date of Order: November 08, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. J.R. Beniwal, for the petitioner.
Mr. Vineet Jain, for the non-petitioner No.1.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 15-6-2006 passed by the Additional Sessions Judge, Nathdwara, district Rajsamand (for short, "the Revisional Court" hereinafter) in Criminal Revision No.12/2006, whereby the revision petition filed by the petitioner against the order dated 26-4-2006 passed by the Sub-Divisional Magistrate, Nathdwara (for short, "the Executive Magistrate" hereinafter) was dismissed.

I have heard learned counsel for the parties.

Carefully gone through the orders passed by the Executive Magistrate as well as the Revisional Court.

It is contended by the learned counsel for the petitioner that the Executive Magistrate declared the non-petitioner No.1, who was party No.1 before it, to be in possession without recording the evidence and, therefore, the orders of the Executive Magistrate, as well as the Revisional Court are bad in law.

Learned counsel for the non-petitioner No.1 submits that the non-petitioner No.1 is in the lawful possession of the subject-matter of dispute in execution of the decree passed by the Civil Court in favour of the non-petitioner No.1.

It appears that the non-petitioner No.1 filed a suit for eviction against the petitioner in the Court of the Munsif Magistrate, Nathdwara (for short, "the Civil Court" hereinafter) and that suit came to be decreed in favour of the non-petitioner No.1 and against the present petitioner. An Execution Petition No. 8/1988 was filed by the non-petitioner No.1 against the petitioner. By the order dated 19-4-1988, the Civil Court, on a warrant of possession, got the possession of the subject-matter in dispute delivered to the non-petitioner No.1 and since 19.4.1988, in compliance of the order of the Civil Court, the non-petitioner No.1 was in the lawful possession of the subject-matter in dispute.

It is alleged that on 2-5-1988, the petitioner tried to dispossess the non-petitioner No.1. The proceedings under Sections 145 and 146 as also under Section 107 of the Code were initiated by way of filing a complaint before the Executive Magistrate on 7-5-1988 under Sections 145 and 146 of the Code. The Executive Magistrate drew a preliminary order as envisaged under sub-section (1) of Section 145 of the Code and also attached the land in dispute considering it to be a matter of emergent nature and also appointed the Receiver under sub-section (1) of Section 146 of the Code..

During pendency of the proceedings before the Executive Magistrate, in execution of the judgment and decree of the Civil Court, a warrant of possession was issued and possession of the subject-matter of dispute was handed over to the non-petitioner No.1. In furtherance thereof, the documents relating to handing over the possession by the Civil Court was filed before the Executive Magistrate. The Executive Magistrate, on receiving the judgment and decree of the Civil Court as also the order by which the possession was handed over to the non-petitioner No.1, released the subject-matter of dispute from attachment and directed to hand over the possession of the suit property to the non-petitioner No.1. In compliance of the order of the Executive Magistrate and on dismissal of the revision against that order by the Revisional Court, the possession of the

subject-matter was handed over to the non-petitioner No.1 by the Executive Magistrate. On 29-6-2006, the Executive Magistrate directed the Receiver to release the property from the attachment and hand-over the possession thereof to the non-petitioner No.1. On 1.7.2006, the possession over the subject-matter of dispute was handed over to the non-petitioner No.1.

Both the Courts below found that there is a judgment and decree in favour of the non-petitioner No.1. A competent Civil Court has decided the rights of the parties and the possession of the property has been handed over to the non-petitioner No.1 in execution proceedings by the Civil Court and, therefore, no useful purpose will be served to allow the proceedings to continue any further.

In Mahar Jahan & ors. Vs. State of Delhi & ors., (2004) 13 SCC 421, the Hon'ble Supreme Court held as under:-

> "It is not disputed by the learned counsel for the parties that this very property which is the subject-matter of these criminal proceeds is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possess would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 Cr.P.C. may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be

> passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit."

In the instant case, the parties have already gone to the civil court and the civil court decided the rights of the parties and by the judgment and decree and thereafter in execution of the decree, the party No.1, who is non-petitioner No.1 herein, has been put in possession of the property. In my view, both the courts below were justified in releasing the property from attachment, as also dropping the proceedings and dismissing the revision against that order. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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